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Fish and Game Commission



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1/29/15

January 21, 2015

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to subsection (b) of Section 27.65 and subsection (b) of Section 28.38, Title 14, California Code of Regulations, relating to Pacific bluefin tuna daily bag limit and tuna fillet procedures, which will be published in the California Regulatory Notice Register on January 23, 2015.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Ms. Mandy Lewis, Environmental Scientist, Department of Fish and Wildlife, Marine Region, (562) 342-7169 or Mandy.Lewis@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, and 313 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 220, 240, 313, 5508, and 5509 of said Code, proposes to amend subsection (b) of Section 27.65 and subsection (b) of Section 28.38, Title 14, California Code of Regulations, relating to Pacific bluefin tuna daily bag limit and tuna fillet procedures for consistency with federal rules.

Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (PFMC) reviews the status of Pacific bluefin tuna and other west coast tuna populations using a biennial management cycle. As part of that process, it recommends fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the West Coast Highly Migratory Species Fishery Management Plan (HMS FMP). These recommendations coordinate west coast management of recreational and commercial highly migratory species fisheries in the federal fishery management zone (three to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as federal fishing regulations by the National Marine Fisheries Service (NMFS).

For consistency, the California Fish and Game Commission (Commission) routinely adopts regulations to bring State law into conformance with federal law for Pacific bluefin tuna and other federally-managed species.

Summary of Proposed Amendments

The Department of Fish and Wildlife (Department) is proposing the following regulatory changes to be consistent with the PFMC recommendations for federal tuna regulations in 2015 and 2016. This approach will allow the Commission to adopt State recreational tuna regulations to timely conform to those taking effect in federal ocean waters in May 2015.

The proposed regulations decrease the Pacific bluefin tuna daily bag limit from 10 to two fish. Pacific bluefin tuna was declared overfished and a decreased bag limit is expected to reduce the recreational catch by 30 percent for 2015 and 2016, within the range recommended by the IATTC.

The proposed reduction to the Pacific bluefin tuna daily bag and possession limit creates a need for law enforcement to differentiate between Pacific bluefin tuna and other tuna species commonly landed by southern California anglers.

The proposed regulations would modify the fillet regulations to require tuna filleted on any boat or brought ashore as fillets south of Point Conception be filleted in a manner that allows for identification of the species of tuna. The final recommendation for fillet regulations for all species of tuna filleted on a vessel or brought ashore as fillets south of Point Conception requires that each fish be cut into six pieces retaining all the skin, all pieces of each fish be placed together in one bag, and the bag be labeled with the species' common name.

The benefits of the proposed regulations are consistency with federal regulation, the sustainable management of California's tuna resources, and protection of overfished stocks.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202 and 205) and tuna fishing regulations specifically (Fish and Game Code, Section 313). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR), general sport fishing regulations in Chapters 1 and 4 of Subdivision 1 of Division 1, Title 14, CCR, and regulations concerning the exchanging of sport-caught fish (Section 231, Title 14, CCR). Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of Pacific bluefin tuna.

The proposed regulations are neither inconsistent nor incompatible with existing State Department of Health Services regulations concerning canning, inspection and labeling of food and pet food (sections 12660, 12665, 12670, 12675, 12680, 12685 and 19025, Title 17, CCR), and Department of Health Services regulations concerning the California Special Supplemental Food Program for Women, Infants and Children (Section 40740, Title 18, CCR).

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, February 11, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Flamingo Conference Resort & Spa, 2777 Fourth Street, Santa Rosa, California, on Wednesday, April 8, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 12:00 noon on April 3, 2015.** All comments must be received no later than April 8, 2015, at the hearing in Santa Rosa, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Mandy Lewis, Environmental Scientist, Department of Fish and Wildlife, Marine Region, (562) 342-7169 or Mandy.Lewis@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption.

Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Negative economic impacts are not expected from a reduction in the Pacific bluefin tuna bag limit as fishers will likely target other tuna species after the Pacific bluefin tuna limit is met. The reduced bag limit is also not expected to substantially reduce the numbers of anglers on CPFV trips and the associated angler spending. The proposed regulations continue to allow recreational anglers to take and possess Pacific bluefin tuna in State waters, and for CPFV anglers to have their tuna catch filleted by crew members while the vessel is still at sea.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. No significant changes in fishing effort and recreational fishing expenditures to businesses are expected as a direct result of the proposed regulation changes.

The Commission does not anticipate any benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's sport fishing resources, which may result in benefits to the health and welfare of California residents. Participation in sport fisheries opportunities fosters conservation through education and appreciation of California's fish and wildlife.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: January 13, 2015

Sonke Mastrup
Executive Director